

**FINAL REPORT OF THE JOINT SUBCOMMITTEE STUDYING THE
FEASIBILITY OF GRANTING THE STATE CORPORATION
COMMISSION ADDITIONAL MANAGEMENT OVERVIEW
RESPONSIBILITIES AND POWERS TO FACILITATE THE
REGULATION OF PUBLIC UTILITIES**

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA



HOUSE DOCUMENT NO. 40

**COMMONWEALTH OF VIRGINIA
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Final Report of the Joint Subcommittee Studying the Feasibility of Granting the State Corporation Commission Additional Management Overview Responsibilities and Powers to Facilitate the Regulation of Public Utilities
Richmond, Virginia
October, 1979

To: Honorable John N. Dalton, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The Joint Subcommittee Studying the Feasibility of Granting the State Corporation Commission Additional Management Overview Responsibilities and Powers to Facilitate the Regulation of Public Utilities was established pursuant to House Joint Resolution No. 56 of 1978.

HOUSE JOINT RESOLUTION NO. 56

Requesting a joint subcommittee of the Corporations, Insurance and Banking Committee of the House of Delegates and the Commerce and Labor Committee of the Senate to study the feasibility of granting the State Corporation Commission certain management overview responsibilities and powers to facilitate the regulation of public utilities.

WHEREAS, the citizens of the Commonwealth are experiencing steady increases in their public utility bills; and

WHEREAS, many citizens of the Commonwealth question the managerial efficiency of such utilities; and

WHEREAS, the State Corporation Commission presently has limited management overview responsibilities and powers as relates to public utilities; and

WHEREAS, it is important that the concept of management overview be studied, particularly as it would apply to large capital construction projects of public utilities; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Corporations, Insurance and Banking Committee of the House of Delegates and the Commerce and Labor Committee of the Senate are requested to create a joint subcommittee to study the feasibility of granting the State Corporation Commission management overview responsibilities and powers as relates to public utilities; and, further, if sufficient need is indicated in the judgement of the joint subcommittee, it shall recommend specific management overview responsibilities and powers to be bestowed on the Commission and the method of implementing such responsibilities and powers.

The joint subcommittee shall consist of five members from the House of Delegates and three members from the Senate. The members shall be appointed by the Chairmen of the respective Committees.

The joint subcommittee is requested to complete its study and present its findings, conclusions, and recommendations to the Governor and the General Assembly not later than November one, nineteen hundred seventy-eight.

House Joint Resolution No. 294 of the 1979 General Assembly continued the work of the subcommittee.

HOUSE JOINT RESOLUTION NO. 294

Requesting the Joint Subcommittee of the Corporations, Insurance and Banking Committee of the House of Delegates and the Commerce and Labor Committee of the Senate to continue its study on the feasibility of granting the State Corporation Commission certain management overview

responsibilities and powers to facilitate the regulation of public utilities.

WHEREAS, the citizens of the Commonwealth are experiencing steady increases in their public utility bills; and

WHEREAS, many citizens of the Commonwealth question the managerial efficiency of such utilities; and

WHEREAS, the State Corporation Commission presently has limited management overview responsibilities and powers as relates to public utilities; and

WHEREAS, it is important that the concept of management overview be studied, particularly as it would apply to large capital construction projects of public utilities; and

WHEREAS, House Joint Resolution No. 56 of the nineteen hundred seventy-eight Session of the General Assembly created the Joint Subcommittee Studying the Feasibility of Granting the State Corporation Commission Certain Management Overview Responsibilities and Powers to Facilitate the Regulation of Public Utilities; and

WHEREAS, although the Joint Subcommittee has made significant progress, additional work remains to be done; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee of the Corporations, Insurance and Banking Committee of the House of Delegates and the Commerce and Labor Committee of the Senate Studying the Feasibility of Granting the State Corporation Commission Certain Management Overview Responsibilities and Powers to Facilitate the Regulation of Public Utilities is hereby continued. The Joint Subcommittee is requested to continue studying the feasibility of granting the State Corporation Commission management overview responsibilities and powers as relates to public utilities; and, further, if specific need is indicated in the judgment of the Joint Subcommittee, it shall recommend specific management overview responsibilities and powers to be bestowed on the Commission and the method of implementing such responsibilities and powers. The Joint Subcommittee is also requested to study the feasibility of, and benefits that could be derived from, the creation of a Virginia Office of Individual Consumers of Electricity: an agency charged with representing residential and small-business electric utility customers of the Commonwealth.

The present eight members shall continue to serve on the Joint Subcommittee. If a vacancy occurs for any reason, a successor shall be appointed by the appropriate person pursuant to the method of appointment specified in House Joint Resolution No. 56 of the nineteen hundred seventy-eight General Assembly.

The Joint Subcommittee is requested to complete its study not later than November one, nineteen hundred seventy-nine.

All agencies of the Commonwealth shall assist in this study.

Lewis W. Parker, Jr., of South Hill, a member of the House of Delegates of Virginia, was appointed Chairman of the subcommittee. Also appointed to serve from the House of Delegates were Richard M. Bagley of Hampton, Gerald L. Baliles of Richmond, Glenn B. McClanan of Virginia Beach and William T. Wilson of Covington. Appointed to serve from the Senate of Virginia were Edward E. Willey of Richmond, Coleman B. Yeatts of Chatham, and Charles J. Colgan of Manassas.

C. William Cramme, III, and Hugh P. Fisher, III, of the Division of Legislative Services served as legal and research staff to the subcommittee. The Clerk's Office of the House of Delegates provided administrative and clerical staff assistance to the subcommittee.

WORK OF THE SUBCOMMITTEE

During its two years in existence, the subcommittee held several meetings and heard testimony from various interested parties. In particular, representatives of the State Corporation Commission worked closely with the study group.

At the end of 1978 the subcommittee adopted the following recommendations:

(1) The State Corporation Commission should examine the administrative framework of the divisions of the Commission concerned with the regulation of public utilities. The subcommittee requests that the Commission examine whether an administrative link of some type should be established to coordinate the work of the divisions.

In particular, the subcommittee recommends that the Commission appoint a qualified individual to act as head of those divisions which are involved in public utility regulation. The subcommittee believes the person chosen by the Commission should be knowledgeable in engineering matters, should have expertise concerning utility rates, and should possess proven management skills.

(2) The subcommittee urges the Commission to take a more active role in matters before federal agencies.

(3) The study group believes the Commission should carefully consider whether improvement is necessary regarding the internal capability of the Commission to investigate construction projects of the Commonwealth's public utilities.

(4) The subcommittee recommends that the Commission study the present ratemaking process and determine what changes, if any, might improve the process.

(5) The study should be continued for another year, so the subcommittee can analyze in more detail the areas of concern previously mentioned, as well as any other areas it determines are in need of legislative scrutiny.

During 1979 the subcommittee heard testimony from representatives of the Commission regarding the extent to which the subcommittee's recommendations of the previous year had been considered or acted on. The subcommittee was encouraged to learn that the Commission has selected a new Director for its Public Utility Division. The new director supervises the energy regulation, communications, economic research and development, and accounting branches of the Commission which are concerned with public utility regulation.

The subcommittee was also encouraged by testimony of the new Director concerning his commitment to developing regulatory plans and procedures for keeping utility rates as low as possible. He added that he and his staff would strive, to the degree possible, to oversee utility plans for the purpose of helping to prevent both overconstruction and underconstruction of public utility generating plants in the Commonwealth.

Additionally, the subcommittee heard testimony from a representative of the Commission who said the SCC recently has taken a more active role in public utility matters before federal agencies and will continue to do so in the future.

On several occasions the subcommittee was advised by Commission representatives that, in their opinion, the SCC does not need new statutory authority in order to exercise sufficient management overview responsibilities and powers over public utilities. They said that in their opinion, present authority allows the Commission to exercise a fairly wide range of such responsibilities and powers.

Mr. Preston Shannon, one of the SCC's Commissioners, advised the subcommittee that, in accordance with the wishes of the General Assembly, the Corporation Commission has been hiring the most qualified individuals it can attract. However, he said, at the present time the Commission faces a problem with regards to its Public Utility Accounting Division.

Mr. Shannon stated that a young employee of that division recently passed the State Certified Public Accountant licensing exam. Upon passing the exam, she was told by the State Board of Accountancy that because she was employed by a State agency, she would have to have four years work experience prior to being licensed as a CPA. On the other hand, Mr. Shannon stated, individuals passing the CPA exam who work for CPA firms must have only two years work experience prior to being licensed. Mr. Shannon stated that, in his opinion, this discrepancy in the experience requirement is unfair.

Mr. Shannon advised the subcommittee that he believes a law should be enacted which would

provide that two years experience with the Commission's Public Utility Accounting Division would satisfy the experience requirement of the State Board of Accountancy. He added that without such a law, it will be very difficult for the Commission to hire and keep highly qualified individuals; and he recommended passage of such legislation. Mr. Shannon furnished the subcommittee with a draft of such a law.

RECOMMENDATIONS

The subcommittee offers the following recommendations to the Governor and the General Assembly:

(1) The General Assembly should give the State Corporation Commission any additional management overview powers which the Legislature determines to be in the public interest. Since the subcommittee feels the SCC should be exercising important overview and inspection functions, the study group also feels that the Legislature should not hesitate to give the Commission the proper powers to carry out such functions.

(2) Whenever a public utility in the State proposes a major capital construction project, the Commission should carefully estimate the costs of such a project, determine whether such a project is in the best interests of the citizens of the Commonwealth, and then support or oppose the project. Additionally, the subcommittee recommends that the Commission establish and implement procedures for overseeing and monitoring the feasibility of capital construction projects.

(3) Decisions of the Commission concerning proposed changes in public utility rates, tolls, or charges should be made as promptly as possible. Time limits should be imposed on the Commission's authority to suspend proposed utility rates, tolls or charges. Legislation which would impose such time limits on the Commission is attached as the Appendix to this report.

(4) The subcommittee does not take a position regarding the merits of any bill which would provide that two years experience with the Corporation Commission's Public Utility Accounting Division would satisfy the experience requirement of the State Board of Accountancy. However, the subcommittee does feel that a bill should be drafted and readied for consideration by the 1980 General Assembly if the issue is not resolved satisfactorily in some manner by the time the Assembly convenes. If the General Assembly does consider such a bill, it should do so through a hearing in which all interested parties are allowed to participate.

(5) The subcommittee believes that the Attorney General's Office should effectively represent the interests of the people as consumers in matters before the Corporation Commission.

(6) The new Director of the Commission's Public Utility Division should employ individuals with a high degree of engineering expertise within his Division so that the Commission is well qualified to conduct thorough inspections of utility construction sites and facilities throughout the State. The subcommittee feels that the Commission's ability to conduct on-site inspections should be improved.

(7) The subcommittee believes that at least twice a year the utilities subcommittees of the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor should meet with representatives of the Commission to discuss matters relating to public utility regulation in the Commonwealth.

REASONS FOR RECOMMENDATIONS

The subcommittee's first recommendation is that the General Assembly should give the State Corporation Commission any additional management overview powers which the Legislature determines to be in the public interest.

The subcommittee believes that an important function of the Commission should be the exercising of management overview responsibilities and powers over the State's public utilities. The study group believes that when properly exercised, overview responsibilities and powers enable the Commission to help ensure that the most important decisions and actions of the Commonwealth's public utilities are in the public interest. Consequently, the subcommittee feels that since the SCC

should be carrying out important overview and inspection functions, the study group also feels that the Legislature should not hesitate to give the Commission the proper powers to carry out such functions.

The subcommittee's second recommendation is that whenever a public utility in the State proposes a major capital construction project, the Commission should carefully estimate the costs of such a project, determine whether such a project is in the best interests of the citizens of the Commonwealth, and then support or oppose the project. Additionally, the subcommittee recommends that the Commission establish and implement procedures for overseeing and monitoring the feasibility of capital construction projects.

The subcommittee was advised that because of federal preemption, in some cases the State Corporation Commission has limited influence in the decision whether large capital construction projects of public utilities should be approved. In such cases of federal preemption, the subcommittee recommends that the Commission fully articulate its position before the appropriate federal agencies.

In those cases in which the Commonwealth has the ultimate authority for deciding whether a large capital construction project should be approved, the subcommittee believes the Commission should approve or disapprove such a project only after determining whether such a project is in the best interests of the citizens of the Commonwealth.

The study group feels that since the ratepayers of the Commonwealth must pay for such projects, it is the duty of the Commission to estimate the costs and determine the feasibility of those projects. Such a study and determination should be made regardless of whether State or federal authorities make the ultimate decision regarding whether a large capital construction project will be undertaken.

Additionally, the subcommittee believes that the establishment and implementation of procedures for overseeing and monitoring the feasibility of capital construction projects will significantly improve the Commission's oversight and monitoring capabilities. Moreover, the subcommittee was encouraged by testimony of the new Director of the Commission's Public Utility Division concerning his commitment to developing regulatory plans and procedures for keeping utility rates as low as possible. The study group firmly believes that the Public Utility Division should strive, to the degree possible, to oversee utility plans for the purpose of helping to prevent both overconstruction and underconstruction of public utility generating plants in the Commonwealth.

Obviously, if there is overconstruction of such plants in the Commonwealth, either in terms of the number of such plants, or in terms of their size, ratepayers of utility services will be paying more in rates than is warranted by the demand for the services. On the other hand, if there is underconstruction of such plants, either in terms of the number of such plants, or in terms of their size, demand for the service will at least occasionally exceed the available supply of the service. Because of the detrimental consequences associated with either overconstruction or underconstruction, the subcommittee strongly encourages the SCC to closely monitor the degree of public utility generating plant construction needed in the Commonwealth.

The subcommittee's third recommendation is that decisions of the Commission concerning proposed changes in public utility rates, tolls or charges should be made as promptly as possible. Time limits should be imposed on the Commission's authority to suspend proposed utility rates, tolls or charges. Legislation which would impose such time limits on the Commission is attached as the Appendix to this report.

The subcommittee is aware that most of the Commission's decisions regarding proposed changes in public utility rates are issued in a timely fashion.

However, given the present high rate of inflation, as well as the current unstable economic conditions in general, the subcommittee feels it is important that all of the Commission's decisions be made in a timely fashion. Some utilities in the Commonwealth have contended that substantial delays in rate case decisions contribute to higher costs because rates and financial plans are outdated when the decisions are rendered. The subcommittee believes that timely decisions by the Commission would benefit both consumers and the utilities.

The fourth recommendation is that the subcommittee does not take a position regarding the merits of any bill which would provide that two years experience with the Corporation Commission's Public Utility Accounting Division would satisfy the experience requirement of the State Board of Accountancy. However, the subcommittee does feel that a bill should be drafted and readied for consideration by the 1980 General Assembly if the issue is not resolved satisfactorily in some manner by that time. If the General Assembly does consider such a bill, it should do so through a hearing in which all interested parties are allowed to participate.

The subcommittee did not take a position on this issue, because the matter was raised during its last meeting. Thus the study group did not have an opportunity to hear a representative from the State Board of Accountancy explain the Board's position. The study group certainly is sympathetic to the problem faced by the Commission, especially in light of the fact that the General Assembly has asked the SCC to hire the most qualified personnel it can.

However, the subcommittee believes that if such is possible, this issue should be resolved through negotiations on the part of the State Board of Accountancy and the State Corporation Commission. The study group holds that the General Assembly should be cautious of statutorily setting standards for any licensing board. The subcommittee would also point out another possible problem which might arise if such a bill were passed: i.e., other State, federal and local governmental agencies would ask that the law be amended so as to apply to accountants who are employed by them.

The subcommittee feels that if the General Assembly considers the issue, a full hearing should be held in which all interested parties can present their positions.

In summary, the subcommittee believes it is best for this type of matter to be resolved by the conflicting parties. However, if the issue is not settled by the beginning of the 1980 Session, then the General Assembly should consider the matter.

The subcommittee's fifth recommendation is that the Attorney General's Office should effectively represent the interests of the people as consumers in matters before the Corporation Commission.

Section 2.1-133.1 of the Code of Virginia states that one of the duties of the Division of Consumer Counsel of the Office of the Attorney General shall be to "appear before governmental commissions, agencies and departments, including the State Corporation Commission, to represent and be heard on behalf of consumers' interests, and investigate such matters relating to such appearance." The subcommittee has no reason to believe that the Attorney General's Office is not effectively representing the interests of consumers in matters before the Commission.

However, the study group believes that it is important that all groups of utility customers, including consumers, continue to receive complete and effective representation before the Commission.

The subcommittee's sixth recommendation is that the new director of the Commission's Public Utility Division should employ individuals with a high degree of engineering expertise within his division so the Commission is well qualified to conduct thorough inspections of utility construction sites and facilities throughout the Commonwealth.

The study group would point out that a recent Commission practice has been to hire consulting firms to study the construction practices of the Commonwealth's largest electric utility. While believing the State Corporation Commission should continue to utilize the services of consulting firms to some degree, the study group believes the Commission should upgrade its internal capability so that its staff could, in general terms, evaluate the construction practices and programs of the Commonwealth's public utilities. The subcommittee holds that by doing this, the State Corporation Commission would be able to formulate its own general conclusions regarding such construction practices and programs, without relying as much on the conclusions reached by consulting firms.

The subcommittee's seventh recommendation is that at least twice a year the utilities subcommittees of the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor should meet with representatives of the Commission to discuss matters relating to public utility regulation in the Commonwealth.

The subcommittee believes that by holding periodic meetings with representatives of the SCC, the utilities subcommittees of the two committees will be kept informed regarding the extent to which the Commission is exercising its management overview responsibilities and powers. Also, such meetings will provide a forum for the Commission to express its views regarding any additional overview responsibilities and powers it might feel it should have and allow the subcommittees to hear the SCC's rationale for desiring such additional powers.

CONCLUSION

The subcommittee feels that it has completed the task which it was charged to study. The study group believes that the recommendations which it has adopted will enhance the ability of the State Corporation Commission to exercise relevant management overview responsibilities and powers. The subcommittee urges that those recommendations, and the legislation attached as the Appendix to this report, be adopted by the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor.

However; the subcommittee would point out that even though it regards its work as concluded, the respective utilities subcommittees of those two committees should meet periodically with representatives of the Commission to discuss ways of improving the Commission's management overview functions.

Respectfully submitted,

Lewis W. Parker, Jr., Chairman
Richard M. Bagley
Gerald L. Baliles
Glenn B. McClanan
William T. Wilson
Edward E. Willey
Coleman B. Yeatts
Charles J. Colgan

APPENDIX I

HOUSE BILL NO. 861

Offered February 4, 1980

A BILL to amend and reenact § 56-238 of the Code of Virginia, providing for suspension of proposed utility rates and the effectiveness of rates pending investigation and subject to bond.

Patrons—Baliles, Parker, Wilson, and Bagley, R. M.

Referred to the Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 56-238 of the Code of Virginia is amended and reenacted as follows:

§ 56-238. Suspension of proposed rates, etc.; investigation; effectiveness of rates pending investigation and subject to bond; fixing reasonable rates, etc.—The Commission, either upon complaint or on its own motion, may suspend the enforcement of any or all of the proposed rates, tolls, charges, rules or regulations, for a period not exceeding *sixty one hundred and fifty* days, during which time it shall investigate the reasonableness or justice of the proposed rates, tolls, charges, rules and regulations and thereupon fix and order substituted therefor such rates, tolls, charges, rules and regulations as shall be just and reasonable. Notice of the suspension of any proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the thirty days' notice to the Commission and the public heretofore provided for. *If the Commission, in exceptional cases, is unable to conclude its investigations and hearing within the aforesaid period of sixty days, the Commission may, for good reasons shown and spread upon the record, further suspend from time to time the operation of the proposed rates, tolls, charges, or regulations for such moderate and reasonable periods as may be requisite and necessary to complete the investigation; provided, however, such periods of further suspension shall not exceed a total of ten months. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission may, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund, with interest at the rate applicable to judgements, the portion of such increased rates, tolls or charges by its decision found not justified. In the event the Commission has not completed its investigation and issued its decision within two hundred and forty days from the time such proposed rates, tolls or charges were filed, such proposed rates, tolls or charges shall be conclusively presumed to have been approved by the Commission. The Commission shall prescribe all necessary rules and regulations to effectuate the purposes of this section on or before September one, nineteen hundred eighty.*

